105.

Revised

File No. S. Belgaum 2/51

Legal DEPARTMENT

A. BRANCH

Subject:— Suits: Belgaum.

In the Court of the C. J. (S.D.), Belgaum

Civil Suit No. 43 of 1949.

Madhavrao Harihar Deshpande Pltff.

Vs.

The State of Bombay & anr. Defts.

Re: For a declaration that the Govt. is not authorised to make unauthorised entries in the Record of the Inam Village and for injunction.

F=12.

File No. S. Belgaum 2/51.

Bld. Scott. Slip 24-B

C O N T E N T S.

Legal Department File No. S.Bel. 2/51.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Belgaum.

In the Court of the C.J.(S.D).
Belgaum.

C.S.No. 43 of 1949.

M. H. Deshpande

V/s.

The State of B'bay & anr.

For a declaration that the Govt. is not authorised to make unauthorised entries in the record of the Inam Village and for injunction.

1-22.

1 9

Belgaum Civil Suit No. 43 of 1949.

The plaintiff has filed this suit for a declaration that the state Government is not authorised to make unauthorised entries in the Village records of his inam village and for an injunction restraining the Govt. from following such practices and for accounts.

Nothing can be said on merits of the case as no record is available. However the suit is defensible on technical grounds.

The Defence, may, therefore, be sanctioned on the lines of the accompanying brief :-

6/9

ADR As amended
RR 12/9

D. 14.9.50

X No 13107
d. 13/9/50.

No. 13458

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 22nd Sept. 1950.

Subject:- Belgaum Civil suit no 43 of 1949

MEMORANDUM.

The District Government Pleader, Belgaum, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which (~~together with two copies of the written statement~~) is sent herewith in advance.

Papers of the case in files 21 received from the Collector accompany.

E.3

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

Suit for signature
on
21/9

kam. 20.4.50.

A. S.

Issued
on
22/9.

Belgaun Court Asal No. 43/49.

In the Court of Civil Judge Belgaum.

Plaintiff:- (1)Madhavrao Harihar Deshpande Astekar
Caste Brahmin, Occupation Inamdar's.
Age: 49, of Shahapur.
VS

Defendents:- (1)

(2) Virupax Kamer Deshpande Cast:Brahmin, Occupation :Inamdar. Age: 28 of Sulebhavi.

In this the plaintiff informs as under:-

(1) During the reign of Shreemant Sarakar Chintamanarao Appasaheb in the year 1819-20, Annaji Narasinh - the ancestor of the plaintiff, took much pain in effecting the treaty between the Sangli state and British gave back the conquered Sangli State in the possession of the aforesaid Shreemant Sarkar. For these services of the aofresaid Annaji, the village Sulebhavi in the taluka of Shahapur was granted to him by the state as hereditary Inam bestowing upon him a right over 'Kulbab' and 'Kulkanu' and a sanad to that effect was issued to him in the year 1826. And accord-ingly in 1828, a 'Takidpatra' stating that the right of levying & recovering the taxes viz: Jakayat, Shindi, Kalaki and Khoti is vested in the Inamdar in the aforesaid Inam village, was issued.

(2) As per the aforesaid sanad and Takidpatra the Sangli state continued the Inam, in question with all its rights to the ancestors of the plaintiff and the plain-tiff himself. But from the Tharavbad and other village records,it is seen that a number of different practices were followed and are being followed by the state and its revenue authorities against the right of the plaintiff.

(3) As the village Sulebhavi has been alienated to the ancestors of the plaintiff and the rights over 'Kulbab' & 'Kulkanu' have been vested in them, the inamd-ar is entitled to receive all sorts of existing & future revenue in the said Inam village. And accordingly the rights over the Gaothan, Nallas and rievers and Land rev. on the lands of Shet-Sanadis, trees and mines,have been vested in him. Accordingly the Sangli state has granted this village to the Inamdar without reserving any right over any sorts of revenue of the village. Hence the state is not at all entitled to receive any sort of revenue in the said full Inam village.

(4) But from the village records it is evident that a No,of entries have been made by the state with a view to create rights over the Gaothan, trees and backyards etc. If such things will continue they will affect the rights of the Inamdar. And for these reasons, the Sangli State cannot follow any practices against the long-standing and unquestioned rights and interests enjoyed by the plaintiff as per the terms of his sanad in the said full Inam vill-age. With a view to give a permanent warning to the Sangli state for not doing so,the plaintiff is compelled to file this suit.

(5) The accounts of the revenue and taxes which were recovered by the state unauthorisedly in the aforesaid manner, may be inspected and the amount so recovered by the state may be paid to the palintiff.

(6) Defendents No.2 is a share-holder of the afore-

afore. - - - - - .
-said Inam village and he is also interested in the aforesaid rights of the plaintiff; but as he has not joined the palintiff in this connection, he was made defendent.

(7) A notice as per Sec.80 of C.P.C. giving information regarding this suit was duly served on the State Authority on 23-4-47. And similar notice under sec. 80 C.P.C. was also duly served on the Collector on 24-4-47. And the Collector and Revenue Commissioner the representative of the state were also made a party to this suit.

(8) In June 1946 when the plaintiff saw the village records he came across a number of entries made against the rights and interests of the plaintiff. This is the reason for this suit. Besides this looking to the rights & responsibilities of the state and the plaintiff and the subject of this suit being "recovery course of Action", the plaint is in time.

(9) The subject of the suit comes under the special jurisdiction of this court. The suit being against the state and there being no I class S.J. Court in the State this court is competent to try this suit.

(10) This suit being of declaration, injunction and consequent Relief, the costs of the subject (warning) of the suit comes to Rs.5/- And accordingly, court fees is paid on this costs. When amount to be paid to the plaintiff is settled by the Court, adequate court fees will be paid on that amount. The cost of the suit is taken as Rs.10/- for filing this suit.

(A) It may kindly be declared that the Sangli State has no power to make unauthorised entries in the village records against the rights and interests of the Inamdar, who have got right over the Kulbab and Kul-karnannon, in that village. And the state may be warned to stop such practices hereafter.

(B) The account of amount of Rev.& taxes which have since been recovered unauthorisedly by the state in the said Inam village, may be inspected and the amount due to the plaintiff may be paid to him.

(C) The costs of suit may be recovered from the defendent and paid to the plaintiff.

(D) The plaintiff may be permitted to make corrections in the plaint;

(E) Due consideration, according to Law and Justice of the plaint may be made.

Accordingly orders may be passed. Papers as per Ferist accompany.

D/- 8-1-47.

...

Copy presented on 13-9-49.

Sd/-M.H.Asthekar.

C.A 15

Suits :

Belgaum.

For a declaration that the Government is not authorised to make unauthorised entries in the record of the Inam Village and for injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 16852.

Bombay Castle, 29th November 1950.

Letter from the Collector of Belgaum, No. L.A.W. 859, dated 7th July 1950—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 43 of 1949.

Madhavrao Harihar Deshapande ... ... Plaintiff;

versus

The State of Bombay and another ... ... Defendant.

Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

Memorandum to the District Government Pleader, Belgaum, No. 13458, dated 22nd September 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

K Leg H 135—1

[P.T.O.

To

*The Revenue Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Submitted after cis
file in S. Belgaum /51 (new)
29-1-51
H.S.G.
Cu
29-1.

9 4/

BELGAUM CIVIL SUIT NO. 43 OF 1949.

Chronological Statement of Facts.

The plaintiff has filed this suit against Government and one Virupaksh Deshpande for a declaration that Sangli State is not authorised to make any unauthorised entries in the village records of his Inam village and for an injunction restraining the State from following these practices and for refunding the recoveries after taking account of all the amounts unauthorisedly received by the State.

2. The village "Sulebhavi" as the plaintiff alleges, was granted in 1826 to his ancestor as hereditary Inam with "Kulbab" and "Kulkanu" under a sanad issue by the ruler of the Sangli State. In 1828, a "takidpatra" was issued specifying all the taxes Jakayat, Shindi, Kalati, Khoti, etc., to be received by the Inamdar in respect of this Inam village.

3. In June 1946, the plaintiff came to know from the village records that the State and its revenue officers had encroached on his rights by making a number of unauthorised entries in the village records, in contravention of the terms of the Sanad and Takidpatra.

4. On ~~the~~ 23rd April 1947, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code to the Revenue Officers of the Sangli State and on the 9th January 1948, he filed this suit in the Court of the District Judge, Sangli. Due to merger of the State the suit is transferred to the file of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

Frame of the suit.—The suit as framed, is in contravention of the express provisions contained in order VI Rule 2 and order VII Rule 1 (e) of the Civil Procedure Code. It is the cardinal rule of pleadings that the pleading, not to be embrassing to the defendant, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial. In the absence of all material facts it is absolutely impossible to meet the plaintiff's allegations about incorrect entries in the Government records and Government's liability to account for the recoveries made. The suit is vague in material facts and reliefs. The Court should, therefore, be moved under order VI Rule 5 of the Civil Procedure Code to direct the plaintiff to submit a clear statement of the nature of the claims with all necessary particulars.

2. Besides, the plaintiff has joined in this suit two distinct and independent causes of action. His cause of action for correction of village record is distinct from and independent of his cause of action for accounts. The two claims cannot be conveniently tried together. The suit is therefore bad for misjoinder of causes of action.

3. *Bar of Revenue Jurisdiction.*—The plaintiff seeks a relief, *inter alia*, for the correction of entries in the village record and to that extent is barred by section 4 (*d*) (*3*) of the Bombay Revenue Jurisdiction Act, 1976. The Civil Court has no jurisdiction to entertain a suit for a relief of this type. The Revenue Jurisdiction Act similar to the Bombay Revenue Jurisdiction was in force in Sangli State. It should, therefore, be contended that so far as relief for correction of entries in the village record is concerned, the plaintiff's suit, to that extent is barred under section 4 (*d*) (*3*) of the Revenue Jurisdiction Act.

4. Assuming without admitting that the Sangli State or its officers have encroached on the rights of the plaintiff, it can be contended that the successor Government cannot be sued for the illegal acts of the previous Government or their officers. It is an established principle that upon a cession of territory, an inhabitant of a ceded territory can make good in the municipal courts established by the new sovereign only such rights as that new sovereign has recognised and not the rights enjoyed under the rule of his predecessors (Vajesting *v.* Secretary of State 26 Bom. L. R. 1143; Sayad Assar Ahmed *v.* Dargah Committee of Ajmer 49 Bom. L. R. page 235). The plaintiff, therefore, has no right to bring this action against the State of Bombay unless under the agreement of merger between the Sangli State and the Government of Bombay, the State's liability for such illegal acts is undertaken by this Government.

For the above reasons it should be contended that the suit fails and should be dismissed with costs.

11 — 71

No. 2257
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 1950.
6th Feb.

Belgaum
Subject:- Civil Suit No. 43 of 49

MEMORANDUM.

With reference to his letter No. j 22 dated the 31st Jan 1951 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, is informed that two copies of the ~~revised~~ draft ~~are forwarded~~ herewith.
Papers approved mentioned in para 2 of his letter viz files No I + II are not received with this office

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

BM.
20.3.

Issued
6/2

Belgaum forwarded
P.M.9
6-2
Assistant

6-2

Subject applications, the papers may be filed in S.C. Belgaum
2/51

P.M.9
6-2
Assistant

13

In the Court of Civil Judge, Senior Division at Belgaum.

Suit No. 43 of 1949.

Madhavrao Hariharrao Deshpande - - - - - - - - - - - Plaintiff

Vs.

The Province of Bombay - - - - - - - - - - - - - - - Defendant.

Herein the written statement of defendant No. 1 on behalf of Province of Bombay is as under :-

1. This defendant denies the plaintiff's suit in toto.

2. The suit in the present form is not tenable. The plaintiff has joined in this suit two distinct and independent causes of action. The cause of action for correction of village record is distinct from, and, independent of, the cause of action for accounts. The suit, therefore, is bad for misjoinder of causes of action.

3. This defendant does not admit the allegations made in the plaint regarding his alleged rights and the entries in the village record of the village. The plaintiff should be put to strict proof of the rights claimed by him.

4. This defendant denies that the Sangli State made any unauthorised changes or entries in the village record as alleged by the plaintiff. Assuming without admitting that any changes or entries have been made in the village record, this defendant submits that the changes or entries so made, are legal, just and proper. The plaintiff cannot question the legality or the validity of the same. The plaintiff's suit to that extent, is barred by section 4(d)(3) of the Bombay Revenue jurisdiction Act 1876. The Civil Court has therefore no jurisdiction to entertain a suit for the relief in question.

5. The allegations made by the plaintiff in paragraph 4 of the plaint are denied. The defendant does not admit the rights of the plaintiff over the Gavathan, Pardi, Zadi etc., referred to in paragraph 4 of the plaint.

6. The allegations made by the plaintiff in paragraph 5 of the plaint are not admitted by this defendant. The Sangli State has not made any illegal recoveries as alleged by the plaintiff. The plaintiff cannot therefore ask for accounts of the recoveries made by the Sangli State, nor can he claim any refund of the amounts recovered. The recoveries of the amount, if any, are valid

7. The plaintiff has not clearly stated what practices have been set up by the Ssngli State and how they affect the rights or the interest of the plaintiff. He has also not stated the particular entries he wants to challenge. The plaintiff, though asked, to supply the particulars, hasnot fully and properly complied with the same. Even the particulars supplied by the plaintiff are not admitted by this defendant. The rights claimed by the plaintiff in the particulars supplied by him, over the market site, the waste village sites in the "Inam village", the sandle wood and other reserved trees, the tanks and other waste lands and over the Mamul Judi, are denied by this defendant. The alleged rights claimed by the plaintiff in paragraphs 2, 3 and 4 are not admitted by this defendant. Plaintiff should be put to strict proof regarding the rights and interest sbout the same.

8. This defendant is not liable to render accounts of the recoveries made by the Sangli State to the plaintiff, nor is plaintiff entitled to any refund of the amount so recovered from this defendant.

9. Assuming without admitting that the Sangli State or its officers have encroached on the rights of the plaintiff, still this defendant the successor Government of the Sangli State, cannot be sued for the illegal acts of the previous Government or their officers. The plaintiff has no right to bring this action against the State of Bombay unless under the agreement of the merger between the Sangli State and the Government of Bombay, the State's liability for such illegal acts, is undertaken by this Government. No such liabilities have been undertaken by this defendant.

For these reasons plaintiff's suit should be dismissed with costs.

District Government Pleader,
Belgaum.

Belgaum.

I, B. V. Jakati, District Government Pleader, Belgaum, do hereby solembly state that what is mentioned in the above paragraphs 1 to 9 is true to the best of information and instructions. This verification is made at Belgaum, on the of 1951.

District Govennnment Pleader,
Belgaum.

Belgaum.
Dated:-

KC.6/2

15 4

Regular Suit No. 43 of 1949

In the Court of Civil Judge, S.Dn, Belgaum.

1. Madhava Harihar Deshapande. Plff.

Vs.

1. The Province of Bombay. Deft.

The plff submits the following details as demanded by deft under Ex. 21.

1. The deft has taken up the market site reserved from plff Sheri lands for the cattle market, and developed by the plff by constructing wells etc.

2. The deft has taken up the waste village sites in the Inam village and entered them as Gav land in the Tharaoba

3. The deft claims the right to reserve trees of sandle-wood which belong to Inamdar - plff as it is a grant "Darobast", without any reservation, which includes the right underground and reserved trees.

Next 4 on 15-1-51

4. The deft claims right over the tanksand other waste lands in the village. The deft has sold the mud in the tank to one Mr. Aga very recently.

5. The Gav is not entitled to the Mamul Judi, which is a part of the land revenue granted. The prior right expected includes the loss and the settlement judi or Khalsa Khalsa - amount only. But the deft claims Mamul Judi also.

The above is the detailed demanded by the deft per Ex. 21 and copy of sand is produced

Belgaum
9-1-1951

sd.
Pleader for plff.

17 - 37

No. J. 4550 of 19
Belgaum, 30th July 195

To

The Collector of Belgaum.

L. D.
1 AUG 1952

Subject:- Civil Suit No. 43 of 1949
Madhavarao Harihar Deshapande
Vs.
The State of Bombay.

Reference:- Your No. L.A.W. 859

Sir,

With reference to the subject noted above I have the honour to inform you that the Civil Suit No. 43 of 1949 on the file of the Civil Judge, S.Dn., Belgaum was decided by court on 25th of July 1952 and the order of the court runs

" Plff is allowed to with-draw the suit with a liberty to bring a fresh suit vide Ex. 25. Plff to pay the full cost of the suit to Deft and bear his own. Deft 2 do bear his own.

The copy of Ex. 25 is attached herewith for your perusal.

Yours faithfully,

Dist.Govt.Pleader, Belgaum

GOVERNMENT
18584
278/52

17 - 37

No. J. 450 of 1[illegible]
Belgaum, 30th July 19[illegible]

To

The Collector of Belgaum.

Subject:- Civil Suit No. 43 of 1949
Madhavarao Harihar Deshapande
Vs.
The State of Bombay.

Reference:- Your No. L.A.W. 858

Sir,

With reference to the subject noted above I have the honour to inform you that the Civil Suit No. 43 of 1949 on the file of the Civil Judge, S.Dn., Belgaum was decided by the court on 25th of July 1952 and the order of the court runs thus

" Plff is allowed to with-draw the suit with a liberty to bring a fresh suit vide Ex. 25. Plff to pay the full costs of the suit to Deft and bear his own. Deft 2 do bear his costs

The copy of Ex. 25 is attached herewith for your perusal.

Yours faithfully,

Dist.Govt.Pleader, Belgaum.

L. D.
1 AUG 1952

GOVERNMENT
DEPARTMENT
18584
7/8/52

No. J. ५५१ of 9152,
Belgaum 30th Jul, 1952.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for information.

Dist.Govt.Pleader,
Belgaum.

Ex 25 | 17 — 31 — फिलर अस्थाक नंबर 83 — ४८

बॉम्बगांव सि. जु. सि. कोर्ट रत्न -

१ माधवराव हरिहरराव अष्टेकर } वादी

वि.

१ मुंबई सरकार — — — } प्रतीवादी

दावा रुपये.

यांत वादीतर्फे अर्ज :—

जात इनाम संबंधी. सन १९५२ मे. महिन्याच्या
गॅझेट नंबर ... प्रसिद्ध झाल्या प्रमाणे सदर दाव्यास
कायद्याचा जाद मेन्याचा संभव दिसत आहे.
सदर दाव्यात मागणी केल्या प्रमाणे निर्णय होण्यास
सदया अडचण उत्पन्न झाली आहे.

करिता सदर कायद्याचा अक्षरशः परिणाम पाहुन
घेऊन पुन्हा नविन दावा दाखल करणेस कोर्टाची
परवानगी देण्याची वरील दावा काढुन घेणेस हरकत नाही
गॅझेटीच जात इनाम नष्ट करण्याचा कायदा
पुर्वी नाहीसा झाल्याने सदरी दावा काढुन घेणे भाग पडत आहे
करिता मे. कोर्टाने मेहरबानी करुन आमचेवर कोर्ट
खर्च बसवुन दावा काढुन घेणेची परवानगी द्यावी ही नम्र

सन १९५२ इसवी

21 - 41

Suits:
Belgaum.
For a declaration that the Government is not authorised to make unauthorised entries in the record of the Inam Village and for injunction.

Government of Bombay,
Legal Department,
Resolution No. 10012/E
Bombay Castle, 29th April 1953.

Read Government Resolution, Legal Department, No. 16852, dated the 29th November 1950.

Letter from the Collector of Belgaum, No. LAW.

In the Court of the Civil Judge, (Senior Division), Belgaum. Civil Suit No. 43 of 1949. Madhavrao Harihar Deshpande: Plaintiff; vs. and another The State of Bombay: Defendants.	dated the 2nd August 1952, stating that th

suit noted in the margin was decided by the Civil Judge, Senior Division, Belgaum, on the 25th July 1952, when the following order was passed:-

"Plaintiff is allowed to withdraw the suit with a liberty to bring a fresh suit vide Ex.25. Plaintiff to pay full costs of the suit to Defendant and bear his own. Defendant No.2 do bear his costs. "

Letter from the District Government Pleader, Belgaum, No. J-451, dated the 30th August 1952, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

original R T Katarki
(R.T.Katarki),
Deputy Secretary to Government.

Issued 29/4

To

The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

MMS.

Submitted for Regulation
thro
28/4
Sd/- NB 28/4/53
DS (Civil)

42 22

File in S. Belgium 2/51

Thru
30/4.

Surplus NB
FI 30.4.53

S Bel 2/51
1/73